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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920.

No. 795

ROBERT HAWES,
Plaintiff in Error

vs.

STATE OF GEORGIA,
Defendant in Error.

BRIEF FOR THE DEFENDANT IN ERROR.

GEO. M. NAPIER,
Attorney General;

SEWARD M. SMITH,
Assistant Attorney General.

P. O. Address:
Atlanta, Ga.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 425.

ROBERT HAWES,
Plaintiff in Error

vs.

STATE OF GEORGIA,
Defendant in Error.

STATEMENT OF FACTS

The indictment followed the statute. The fact that apparatus for distilling liquor was found on the premises occupied by the defendant shifted the burden to him.

The evidence satisfied the jury. The jury believed the truth of the case as made.

The defendant was tried in accordance with the statutes and the criminal procedure of the State of Georgia.

The Supreme Court of the State held that "the evidence authorized the verdict."

BRIEF WITH REFERENCE TO THE LAW

By the statute, persons occupying land have imposed upon them the obligation to prevent the location of apparatus to make liquor on the lands under their control.

In the opinion of the Supreme Court of Georgia denying a new trial in this case, it was well said:

> "The facts which raised the presumption and shifted the burden of proof as to the main fact under the indictment in the present case evidently have a fair relation to, and a material connection with, the main fact as to which the presumpton is raised. Clearly the existence upon the lands of another which he occupies either as tenant or as owner thereof of distilling apparatus, consisting of the still itself, boxes and barrels, has a clear, natural relation to another named fact necessary to the establishment of the defendant's guilt; that is, that the owner of the land has knowledge of the existence of such objects upon his land. Further discussion of the question raised by this attack upon the constitutionality of the law in question is unnecessary, as it has been considered in several cases decided by this court. See cases cited in the opinion in the Griffin case. 142 Ga. 636."
>
> Hawes vs. The State, 103 S. E. Page 171.

There is really but one question before the court in the instant case. Is the presumption created by the statute reasonable in this case?

It is quite as reasonable as the presumption that one found in possession of goods recently stolen is presumed to be the thief.

The burden is shifted upon the presumptive thief, but he is given the opportunity of satisfying a jury as to his guilt or innocence.

So the presence of the "still," the boxes, barrels, the "worm" etc., on a man's land creates a reasonable presumption that he knew or should have known of the presence of these **outlawed articles** upon his premises.

Yet he was given a fair trial before a jury of his country, and they pronounced him guilty. The highest court in the State held that the verdict was warranted by the evidence.

This court also held that the statute involved was not an arbitrary or unreasonable exercise of its powers by the Legislature of Georgia.

The Defendant had a regular judicial trial, under the rules of evidence fixed by the Legislature of the State of Georgia.

> "The State may provide what may be presumptive evidence of guilt."
>
> State vs. Cunningham, 25 Conn. Page 195.

> "This court has frequently recognized the general power of every legislature to prescribe the evidence which shall be received, and the effect of that evidence, in the courts of its own government."
>
> Bailey vs. Alabama, 55 L. Ed. Page 238.

We respectfully urge that the presumption involved is **not an arbitrary** inference; that there was a rational relation between the presence of the apparatus and the guilt of the defendant; and "that the accused was not deprived of a proper opportunity to submit all the facts bearing upon the issue."

And we respectfully contend that the verdict and judgment should not be disturbed.

Respectfully submitted,

GEO. M. NAPIER,
Attorney General.

SEWARD M. SMITH,
Assistant Attorney General.